



**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 2005 ASSEMBLY BILL 760**

March 2, 2006 - Offered by COMMITTEE ON PROPERTY RIGHTS AND LAND MANAGEMENT.

1 **AN ACT** *to repeal* 236.10 (1) (b) 1. to 3.; *to renumber and amend* 59.69 (3) (b)
2 and 236.10 (1) (b) (intro.); *to amend* 59.69 (1), 59.69 (2) (a) 1., 59.69 (2) (e), 59.69
3 (3) (a), 59.69 (3) (e), 59.69 (5) (c), 59.69 (5) (d), 62.23 (7) (d) 1. b., 66.1001 (3)
4 (intro.), 66.1001 (4) (a) and 236.13 (4); and *to create* 59.69 (3) (b) 1. to 5., 60.23
5 (33), 60.23 (34), 60.62 (5), 60.62 (6), 66.1001 (3m), 66.1001 (4) (f) and 66.1001
6 (4) (g) of the statutes; **relating to:** changes to the comprehensive planning
7 statutes and authorizing towns to withdraw from county zoning.

Analysis by the Legislative Reference Bureau

Under current law, a county board may engage in zoning and land use planning by creating a county planning agency or by designating a previously constituted county committee or commission as the county planning agency. If a county board creates or designates such an agency, the agency is required to direct the preparation of a county development plan for the physical development of the towns within the county and for the cities and villages within the county whose governing bodies agree to have their areas included in the county plan.

Under this substitute amendment, the county board may only designate a single committee of the board to act in all matters pertaining to county planning and zoning.

Under the current law commonly known as the “Smart Growth” statute, if a local governmental unit (city, village, town, county, or regional planning commission) creates a comprehensive plan (a development plan or a master plan) or amends an existing comprehensive plan, the plan must contain certain planning elements. The required planning elements include the following: housing; transportation; utilities and community facilities; agricultural, natural, and cultural resources; economic development; and land use.

Beginning on January 1, 2010, current law requires that certain actions of a local governmental unit that affect land use must be consistent with that local governmental unit’s comprehensive plan. The actions to which this requirement applies are official mapping, local subdivision regulation, and zoning ordinances, including zoning of shorelands or wetlands in shorelands. Also beginning on January 1, 2010, current law requires that if a local governmental unit engages in any program or action that affects land use, the comprehensive plan must contain at least all of the required planning elements. This substitute amendment makes a number of changes to the comprehensive planning statute.

Under the substitute amendment, the comprehensive planning statute requires a local governmental unit to issue written findings, that include its reasons and its reasoning, that indicate how the actions it undertakes are consistent with its own comprehensive plan. If a circuit court case challenges the validity of a comprehensive plan, including whether an allowable action is consistent with a local governmental unit’s comprehensive plan, the substitute amendment requires a court to conclude that the plan is valid. The substitute amendment also requires a court to presume that the action is valid if the local governmental unit issues written findings that describe their reasons for its action. And the substitute amendment also requires a court to conclude that the action is consistent with the plan unless there is no rational basis for the action in any aspect of any of the elements of the comprehensive plan. In addition, only property owners have standing to file an action.

The substitute amendment also requires a local governmental unit, at the initial stage of the preparation of a comprehensive plan, to invite and consider written comments from property owners on their proposed or contemplated uses for their property over the next ten years.

Under current law, if a town board has been granted the authority to exercise village powers, the town board may adopt zoning ordinances under the zoning statutes that apply to cities and villages, subject to a number of conditions. If the county in which the town is located has enacted a county zoning ordinance, town zoning ordinances may not take effect until such ordinances are approved either by a town meeting or by a referendum vote of the electors of the town and are approved by the county board.

Current law authorizes a county board to repeal an existing county zoning ordinance and reenact a comprehensive revision by a single ordinance. Under this substitute amendment, a county is required, approximately every two years, to repeal an existing county zoning ordinance and reenact a comprehensive revision by a single ordinance. The bill requires the repeal and reenactment to occur within

approximately 24 months after the county's comprehensive plan is updated, which current law requires every 10 years.

Also under this substitute amendment, a town board that is authorized to exercise village powers may enact an ordinance withdrawing completely, or partially, from coverage of a county zoning ordinance and a county development plan. The withdrawal may occur only during the 24-month period during which a county is required to repeal and reenact a comprehensive zoning ordinance. The ordinance may not take effect unless the town clerk notifies the county clerk of the proposed ordinance and the town enacts, and sends copies to the county clerk, a town zoning ordinance, a comprehensive plan, and an official map. If a town does withdraw from county zoning, however, it is still subject to a county shorelands zoning ordinance. In addition, a town must provide the same level of enforcement of its zoning ordinance that the county formerly provided. County board approval of a town zoning ordinance is not required if the town has withdrawn from county zoning.

Current law requires that the county development plan include the master plan and official map of a city or village in the county, and that a city or village master plan and official map control in the city's or village's extraterritorial zoning jurisdiction over a county development plan that affects that same area. A city's or village's extraterritorial zoning jurisdiction consists of unincorporated areas (town or county territory) within three miles of the corporate limits of a first, second, or third class city or within one and a half miles of a fourth class city or a village.

Under the substitute amendment, the development plan includes the master plan and official map of a city or village only up to their incorporated limits, unless the city or village has entered into a cooperative boundary agreement with the adjacent town. The substitute amendment also requires that the county development plan include the official map of any town in the county that has adopted a comprehensive plan. Also under the substitute amendment, a city's or village's master plan and official map control in the city's or village's extraterritorial zoning jurisdiction only if an official town map is not part of the county development plan.

Current law allows a town to adopt an official map under certain situations if the town is located in a county that has not enacted a county zoning ordinance. This substitute amendment authorizes a town that may exercise village powers to adopt an official map at any time.

Under current law if two or more governing bodies or agencies have the authority to approve or object to a plat and the requirements of the bodies or agencies conflict, the plat must comply with the most restrictive requirement. This substitute amendment qualifies this provision by allowing a county to object to a town plat only if the plat is subject to a county plan or a boundary agreement to which the county is a party.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 59.69 (1) of the statutes is amended to read:

1 59.69 (1) PURPOSE. It is the purpose of this section to promote the public health,
2 safety, convenience, and general welfare; to encourage planned and orderly land use
3 development; to protect property values, individual property rights, and the property
4 tax base; to permit the careful planning and efficient maintenance of highway
5 systems; to ensure adequate highway, utility, health, educational, and recreational
6 facilities; to recognize the needs of agriculture, forestry, industry, and business in
7 future growth; to encourage uses of land and other natural resources which are in
8 accordance with their character and adaptability; to provide adequate light and air,
9 including access to sunlight for solar collectors and to wind for wind energy systems;
10 to encourage the protection of groundwater resources; to preserve wetlands; to
11 conserve soil, water, and forest resources; to protect the beauty and amenities of
12 landscape and man-made developments; to provide healthy surroundings for family
13 life; and to promote the efficient and economical use of public funds. To accomplish
14 this purpose, the board may plan for the physical development and zoning of territory
15 within the county as set forth in this section and shall incorporate therein the master
16 plan adopted under s. 62.23 (2) or (3) ~~and~~, the official map of any city or village in the
17 county adopted under s. 62.23 (6), and the official map, adopted under s. 60.23 (33),
18 of any town in the county that has adopted a comprehensive plan, as defined in s.
19 66.1001 (1) (a) 2.

20 **SECTION 2.** 59.69 (2) (a) 1. of the statutes is amended to read:

21 59.69 (2) (a) 1. Except as provided under subd. 2., the board may ~~create a~~
22 ~~planning and zoning committee as a county board agency or may create a planning~~
23 ~~and zoning commission consisting wholly or partially of persons who are not~~
24 ~~members of the board, designated the county zoning agency. In lieu of creating a~~
25 ~~committee or commission for this purpose, the board may designate a previously~~

1 established ~~single committee or commission~~ as the county zoning agency, which shall
2 be the sole committee authorized to act in all matters pertaining to county planning
3 and zoning.

4 **SECTION 3.** 59.69 (2) (e) of the statutes, as affected by 2005 Wisconsin Act 26,
5 is amended to read:

6 59.69 (2) (e) Wherever a public hearing is specified under this section, the
7 hearing shall be conducted by the county zoning agency in the county courthouse or
8 in such other appropriate place as may be selected by the county zoning agency. The
9 county zoning agency shall give notice of the public hearing by publication in the
10 county as a class 2 notice under ch. 985, and shall consider any comments made, or
11 submitted by, the commanding officer, or the officer's designee, of a military base or
12 installation, with at least 200 assigned military personnel or that contains at least
13 2,000 acres, that is located in or near the county. The county zoning agency shall also
14 give advance notice to the media of the name of any person the agency knows of who
15 is planning to appear and speak at any noticed public hearing. If the county zoning
16 agency or the board plans to hold a public hearing on a proposal to amend a county
17 development plan and a zoning ordinance, it may provide notice of both proposals in
18 the same class 2 notice under ch. 985.

19 **SECTION 4.** 59.69 (3) (a) of the statutes is amended to read:

20 59.69 (3) (a) The county zoning agency may direct the preparation of a county
21 development plan or parts of the plan for the physical development of the
22 unincorporated territory within the county and areas within incorporated
23 jurisdictions whose governing bodies by resolution agree to having their areas
24 included in the county's development plan. The plan may be adopted in whole or in
25 part and may be amended by the board ~~and endorsed by the governing bodies of~~

1 ~~incorporated jurisdictions included in the plan.~~ The county development plan, in
2 whole or in part, in its original form or as amended, is hereafter referred to as the
3 development plan. Beginning on January 1, 2010, if the county engages in any
4 program or action described in s. 66.1001 (3), the development plan shall contain at
5 least all of the elements specified in s. 66.1001 (2).

6 **SECTION 5.** 59.69 (3) (b) of the statutes is renumbered 59.69 (3) (b) (intro.) and
7 amended to read:

8 59.69 (3) (b) (intro.) The development plan shall include ~~the master plan, if any,~~
9 ~~of any city or village, that was adopted under s. 62.23 (2) or (3) and the official map,~~
10 ~~if any, of such city or village, that was adopted under s. 62.23 (6) in the county,~~
11 without change., without change, all of the following:

12 **SECTION 6.** 59.69 (3) (b) 1. to 5. of the statutes are created to read:

13 59.69 (3) (b) 1. The master plan, if any, up to the incorporated limits of any city
14 or village, that was adopted under s. 62.23 (2) or (3).

15 2. The official map, if any, up to the incorporated limits of a city or village
16 described under subd. 1., that was adopted under s. 62.23 (6) in the county.

17 3. The official map, as adopted under s. 60.23 (33), of any town in the county
18 that has adopted a comprehensive plan, as defined in s. 66.1001 (1) (a) 2.

19 4. Any part of a city or village master plan, that was adopted under s. 62.23 (2)
20 or (3), and that consists of territory outside of the corporate limits of the city or
21 village, but only if the territory is covered by a cooperative plan under s. 66.0307
22 entered into by the city or village and the town in which the territory is located.

23 5. Any part of the official map of a city or village described under subd. 1., that
24 was adopted under s. 62.23 (6), and that consists of territory outside of the corporate
25 limits of the city or village, but only if the territory is covered by a cooperative plan

1 under s. 66.0307 entered into by the city or village and the town in which the territory
2 is located.

3 **SECTION 7.** 59.69 (3) (e) of the statutes is amended to read:

4 59.69 (3) (e) A master plan adopted by a city or village under s. 62.23 (2) and
5 (3) and an official map that is established by a city or village under s. 62.23 (6) shall
6 control in unincorporated territory in a county affected thereby, whether or not such
7 action occurs before the adoption of a development plan, except that if the county
8 development plan includes an official town map as described under par. (b) the town
9 map shall control in its territory.

10 **SECTION 8.** 59.69 (5) (c) of the statutes is amended to read:

11 59.69 (5) (c) A county ordinance enacted under this section shall not be effective
12 in any town until it has been approved by the town board. If the town board approves
13 an ordinance enacted by the county board, under this section, a certified copy of the
14 approving resolution attached to one of the copies of such ordinance submitted to the
15 town board shall promptly be filed with the county clerk by the town clerk. The
16 ordinance shall become effective in the town as of the date of the filing, which filing
17 shall be recorded by the county clerk in the clerk's office, reported to the town board
18 and the county board, and printed in the proceedings of the county board. The
19 ordinance shall supersede any prior town ordinance in conflict therewith or which
20 is concerned with zoning, except as provided by s. 60.62. A town board may withdraw
21 from coverage of a county zoning ordinance as provided under s. 60.23 (34).

22 **SECTION 9.** 59.69 (5) (d) of the statutes is amended to read:

23 59.69 (5) (d) The board ~~may~~ shall by a single ordinance, not later than the 1st
24 day of the 24th month beginning after the effective date of the most recently enacted
25 update of a comprehensive plan under s. 66.1001 (2) (i), unless additional time is

1 required to obtain the certification described under s. 91.06, repeal an existing
2 county zoning ordinance and reenact a comprehensive revision thereto in accordance
3 with this section. Except as otherwise provided in this paragraph, the repeal of the
4 existing ordinance and reenactment of the comprehensive revision shall take effect
5 on the same day. “Comprehensive revision”, in this paragraph, means a complete
6 rewriting of an existing zoning ordinance which changes numerous zoning
7 provisions and alters or adds zoning districts. The comprehensive revision may
8 provide that the existing ordinance shall remain in effect in a town for a period of up
9 to one year or until the comprehensive revision is approved by the town board,
10 whichever period is shorter. If the town board fails to approve the comprehensive
11 revision within a year neither the existing ordinance nor the comprehensive revision
12 shall be in force in that town. Any repeal and reenactment prior to
13 November 12, 1965, which would be valid under this paragraph is hereby validated.

14 **SECTION 10.** 60.23 (33) of the statutes is created to read:

15 60.23 (33) OFFICIAL TOWN MAP. Adopt an official map. A town board that is
16 authorized to exercise village powers under s. 60.10 (2) (c) may adopt an official map
17 under this subsection only by acting under s. 62.23 (6), and the town board and town
18 officers have the same authority and responsibilities as a common council and city
19 officers acting under that s. 62.23 (6).

20 **SECTION 11.** 60.23 (34) of the statutes is created to read:

21 60.23 (34) TOWN WITHDRAWAL FROM COUNTY ZONING. (a) Subject to pars. (b), (c),
22 and (d), and if authorized to exercise village powers under s. 60.10 (2) (c), during the
23 24-month period described in s. 59.69 (5) (d), enact an ordinance withdrawing the
24 town from coverage of a county zoning ordinance that had previously been approved
25 under s. 59.69 (5) (c) and from coverage by a county development plan that has been

1 enacted under s. 59.69 (3) (a). A town acting under this paragraph may withdraw
2 completely, or only partially, from coverage of a county zoning ordinance, but the
3 town may withdraw partially only if the county and town agree on the extent to which
4 the town withdraws from, and the extent to which the town remains covered by, the
5 county zoning ordinance.

6 (b) Subject to par. (c), an ordinance enacted under par. (a) may not take effect
7 until all of the following occur:

8 1. Not later than 60 days before enacting an ordinance under par. (a), the town
9 clerk notifies the county clerk, in writing, of the town's intent to enact an ordinance
10 under par. (a).

11 2. The town enacts a zoning ordinance under s. 60.62, a comprehensive plan
12 under s. 66.1001, and an official map under s. 62.23 (6), and the town clerk sends
13 certified copies of such documents to the county clerk.

14 (c) A zoning ordinance enacted under s. 60.62, a comprehensive plan enacted
15 under s. 66.1001, and an official map established under s. 62.23 (6), that are enacted
16 in conjunction with an ordinance enacted under par. (a), shall all take effect on the
17 first day of the 3rd month beginning after certified copies of the documents are sent
18 to the county clerk under par. (b) 2.

19 (d) A town that acts under par. (a) is still subject to a county shorelands zoning
20 ordinance enacted under s. 59.692.

21 **SECTION 12.** 60.62 (5) of the statutes is created to read:

22 60.62 (5) (a) Not later than 60 days before a town board that wishes to withdraw
23 from county zoning and the county development plan may enact an ordinance under
24 s. 60.23 (34), the town board shall enact a zoning ordinance under this section, an
25 official map under s. 62.23 (6), and a comprehensive plan under s. 66.1001.

1 **SECTION 13.** 60.62 (6) of the statutes is created to read:

2 60.62 (6) (a) A town that has enacted a zoning ordinance and comprehensive
3 plan as described under sub. (5) shall provide at least as many hours of town
4 employee staff time enforcing the ordinance as the county provided to enforce the
5 county zoning ordinance in the town when the town was subject to the county zoning
6 ordinance, based on the formula described under par. (b) and subject to par. (c).

7 (b) 1. The town shall determine the total number of hours of spent by the county,
8 on average, on a weekly basis, spent by county employees on enforcement of the
9 county zoning ordinance.

10 2. The town shall divide the amount determined under subd. 1. by the
11 population of the county.

12 3. The town shall multiply the amount determined under subd. 2. by the
13 population of the town to determine the average weekly number of hours of
14 enforcement that town employees must spend enforcing the town zoning ordinance.

15 (c) The number of hours of enforcement of the town zoning ordinance that a
16 town must provide, as described under par. (a), may not include the number of hours
17 spent by a county enforcing a shorelands zoning ordinance enacted under s. 59.692.

18 **SECTION 14.** 62.23 (7) (d) 1. b. of the statutes, as affected by 2005 Wisconsin Act
19 26, is amended to read:

20 62.23 (7) (d) 1. b. The council may make changes in the tentative
21 recommendations after first submitting the proposed changes to the plan
22 commission, board of public land commissioners or plan committee for
23 recommendation and report and after publishing a class 2 notice, under ch. 985, of
24 the proposed changes and hearings thereon as well as the notice to the clerk of any
25 contiguous municipality and to the commanding officer, or the officer's designee, of

1 any military base or installation, with at least 200 assigned military personnel or
2 that contains at least 2,000 acres, that is located in or near the city, as required in
3 subd. 1. a. Hearings on the proposed changes may be held by, at the council's option,
4 the council, the plan commission, the board of public land commissioners or the plan
5 committee. The entity holding the hearing shall consider any comments made, or
6 submitted, by the commanding officer, or the officer's designee, of a military base or
7 installation, with at least 200 assigned military personnel or that contains at least
8 2,000 acres, that is located in or near the city. The class 2 notice required under this
9 subdivision may also include any required notice for a hearing to be held by the plan
10 commission or the common council on a proposal to amend the city's master plan.

11 **SECTION 15.** 66.1001 (3) (intro.) of the statutes is amended to read:

12 66.1001 (3) ACTIONS, PROCEDURES THAT MUST BE CONSISTENT WITH COMPREHENSIVE
13 PLANS. (intro.) Beginning on January 1, 2010, if a local governmental unit engages
14 in any of the following actions, those actions shall be consistent with that local
15 governmental unit's comprehensive plan, and the local governmental unit shall
16 issue written findings, which shall include the local governmental unit's reasons and
17 reasoning, that indicate how the actions are consistent with its own comprehensive
18 plan:

19 **SECTION 16.** 66.1001 (3m) of the statutes is created to read:

20 66.1001 (3m) ACTIONS CHALLENGING CONSISTENCY WITH COMPREHENSIVE PLANS.
21 If a case is filed in circuit court that challenges the validity of a comprehensive plan,
22 including whether an action described under sub. (3) is consistent with the
23 comprehensive plan of the local governmental body that is taking the action, a court
24 shall presume that the plan is valid. The court shall presume that the action
25 described under sub. (3) is valid if the local governmental unit has issued written

1 findings that describe the reasons for the action it has taken. The court shall
2 conclude that the action is consistent with the comprehensive plan unless there is
3 no rational basis for the action in any aspect of any of the elements of the
4 comprehensive plan. Only property owners have standing to file a case under this
5 subsection. The circuit court may not permit the local governmental unit to
6 introduce any information that is not contained in the written findings it has issued.

7 **SECTION 17.** 66.1001 (4) (a) of the statutes is amended to read:

8 66.1001 (4) (a) The governing body of a local governmental unit shall adopt
9 written procedures that are designed to foster public participation, including open
10 discussion, communication programs, information services, the solicitation and
11 submission of written comments as described under par. (f), and public meetings for
12 which advance notice has been provided, in every stage of the preparation of a
13 comprehensive plan. The written procedures shall provide for wide distribution of
14 proposed, alternative, or amended elements of a comprehensive plan and shall
15 provide an opportunity for written comments on the plan to be submitted by
16 members of the public to the governing body and for the governing body to respond
17 to such written comments. The written procedures shall describe the methods the
18 governing body of a local governmental unit will use to distribute proposed,
19 alternative, or amended elements of a comprehensive plan to owners of property, or
20 to persons who have a leasehold interest in property pursuant to which the persons
21 may extract nonmetallic mineral resources in or on property, in which the allowable
22 use or intensity of use of the property is changed by the comprehensive plan.

23 **SECTION 18.** 66.1001 (4) (f) of the statutes is created to read:

24 66.1001 (4) (f) At the initial stage of the preparation of a comprehensive plan,
25 a local governmental unit shall invite written comments from property owners on the

1 property owners' proposed or contemplated uses for their property over the next 10
2 years. A property owner may submit such written comments not later than the 60th
3 day beginning after the local governmental unit solicits the comments. The plan
4 commission or other body of a local governmental unit that is authorized to prepare
5 a comprehensive plan shall consider all written comments that are submitted under
6 this paragraph.

7 **SECTION 19.** 66.1001 (4) (g) of the statutes is created to read:

8 66.1001 (4) (g) At least 30 days before the public hearing described in par. (d)
9 is held, a local governmental unit shall hold at least one public forum at which the
10 proposed ordinance or resolution is discussed. That forum must be preceded by a
11 class 1 notice under ch. 985 that is published at least 30 days before the forum is held.
12 Notice of the forum shall also be sent to every governmental body described in par.
13 (b) 1. and to any state agency which the local governmental unit believes would be
14 interested in attending, or being made aware of, the forum.

15 **SECTION 20.** 236.10 (1) (b) (intro.) of the statutes is renumbered 236.10 (1) (b)
16 and amended to read:

17 236.10 (1) (b) If within the extraterritorial plat approval jurisdiction of a
18 municipality, a joint committee consisting of 3 town members and 3 citizen members
19 of the municipality, if it has adopted a subdivision ordinance or an official map under
20 s. 62.23. The 3 citizen members of the municipality shall be appointed by the mayor.
21 The 3 town members shall be appointed by the town board for 3-year terms, shall
22 be residents of the town, and shall be persons experienced in plat review.

23 **SECTION 21.** 236.10 (1) (b) 1. to 3. of the statutes are repealed.

24 **SECTION 22.** 236.13 (4) of the statutes is amended to read:

